



**US Army Corps  
of Engineers®**

Detroit District

# News Release

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## Harsens Island residents fined \$25,000 for wetland fill violation

**DETROIT --** The United States Court of Appeals for the Sixth Circuit in Cincinnati recently reinstated a \$25,000 fine against Joseph Morrison and Alice Pauley for their unauthorized discharges of dredged and/or fill material in wetlands adjacent to the St. Clair River on their property on Harsens Island, Michigan.

The fine, initially levied against Morrison and Pauley in March 2001 by Judge Robert Cleland in the U.S. District Court in Detroit, Michigan, was for their "history of refusing to comply with the law." The unauthorized wetlands discharges violated Section 404 of the Clean Water Act.

### Background

#### Authorization

The U.S. Army Corps of Engineers, Detroit District, the agency that enforces Section 404 violations in Michigan on Great Lakes waterways, discovered the unauthorized wetland discharges in June 1994 and apprised Morrison and Pauley the discharges were a violation of Section 404.

#### Unresolved restoration

Morrison and Pauley made no effort to resolve the matter of their unauthorized work, refused to submit an after-the-fact application for the work, and ignored the Corps subsequent order to restore the wetlands. In March 1999, the United States Attorney's Office for the Eastern District of Michigan filed a complaint against Morrison, Pauley, and Pauley's father; Samuel Pauley, a co-owner of the property. The complaint sought full restoration of the wetlands and a civil penalty against the responsible parties. Judge Cleland awarded summary judgment in the United States' favor in October 2000.

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Harsens Island fine 2-2-2

#### Fine imposed

The U.S. Army Corps of Engineers, Detroit District civil works program encompasses 93,000 square miles area of the lower Great Lakes basin in Michigan, Indiana, Wisconsin, Minnesota, and Ohio. The Corps operates and/or maintains 104 navigation structures in the basin. Its mission includes real estate transactions, flood control, regulatory activities, disaster response, and mobilization readiness.

Pauley' father quitclaimed his interest in the property to Pauley one day prior to a January 2001 penalty hearing. During the hearing, the senior Pauley entered into a consent decree with the United States and agreed to restore the wetlands, over the objections of Pauley and Morrison. During a February 2001 resumption of the penalty hearing, Judge Cleland ordered Pauley and Morrison to allow contractors access to the property for the purposes of restoring the wetlands and imposed a \$25, 000 fine against them. In his decision, Judge Cleland noted the "strong indications that the defendants were, essentially, stringing the Corps along, and trying to see if...the Corps would simply give up after a period of time."

#### **Access refused**

Pauley and Morrison refused others access to the property and Pauley sent the government a letter stating "we have decided that we will NOT allow ANY...ONE on our property." In May 2001, after receiving word from Samuel Pauley's attorney that Morrison and Pauley continued to refuse access to the property, the United States filed an emergency motion to enforce the consent decree with the senior Pauley.

#### **Fine dismissed**

At that time, Judge Cleland stepped down from the case, so it was reassigned to U.S. District Judge George Woods. In an apparent effort to gain compliance with the Court's directive to restore the wetlands, Judge Woods vacated the \$25,000 fine against Morrison and Pauley in May 2001. Judge Woods reiterated the restoration order and strongly cautioned Morrison and Pauley against delaying wetland restoration. The U.S. Attorneys office immediately appealed Judge Woods' order vacating the civil penalty and closely monitored the status of restoration. Contractors were finally allowed on the property in June 2002 and the wetlands were restored to the Corps satisfaction.

#### **Fine reinstated**

In their February 24, 2003 decision to reinstate the fine, the Circuit Court acknowledged Judge Woods' efforts to achieve wetland restoration; however, they noted his vacating of a court order in an effort to encourage a party to comply with another court order should not have been "an available tool".

The Circuit Court also noted that Morrison's and Pauley's "blatant refusal to comply with a court order would have warranted contempt proceedings, but certainly not a reward for their obstruction."